

GILBERT MARK CASTILLO

IBLA 78-185

Decided June 27, 1978

Appeal from decision of the Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas lease M 26109-B, which had terminated automatically for failure to make timely payment of annual rental.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A lessee requesting reinstatement of an oil and gas lease terminated for failure to pay rental timely must show that he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail in order to demonstrate reasonable diligence under 30 U.S.C. § 188(c) (1970).

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rental

Reliance on receipt of a courtesy billing notice from the Bureau of Land Management is not a justifiable excuse requiring reinstatement of an oil and gas lease terminated for failure to pay rental timely. The failure of the Bureau of Land Management to change a lessee's address of record which results in the courtesy notice's arriving late does not relieve the lessee from the obligation to pay rental timely.

APPEARANCES: Mrs. G. M. Castillo, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Gilbert Castillo appeals from the January 5, 1978, decision of the Montana State Office, Bureau of Land Management (BLM), denying a petition for reinstatement of his oil and gas lease, which had terminated by operation of law when payment of annual rental was not received on or before December 1, 1977, the anniversary date of the lease. The rental was not received until December 5, 1977, and the payment was postmarked December 2, 1977.

In his petition for reinstatement, and again on appeal, appellant asserts that his failure to pay his annual rental timely resulted from BLM's failure to send a billing notice to his new address, despite his having notified BLM of this change of address in October 1977.

In its decision, BLM noted that it did not receive notification of appellant's change of address until November 7, 1977, which was 10 days after the date the billing notice was sent out to appellant. BLM also noted that billing notices are only a courtesy and that lessees are obligated to pay rental timely whether or not they receive these notices. As appellant did not furnish evidence indicating either that he employed reasonable diligence in making the payment, or that his failure to make timely payment was justifiable, BLM denied his petition for reinstatement. We affirm.

[1] An oil and gas lease terminated for failure to pay annual rental on or before the anniversary date may be reinstated only if the failure to pay timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). Reasonable diligence requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Mailing the payment after it is due does not constitute reasonable diligence. Apostolos Paliombeis, 30 IBLA 153 (1977); Bobbie Arnold, 24 IBLA 352 (1976). Thus, because he mailed his rental payment on December 2, 1977, after it was due, appellant cannot show that the failure to pay timely was despite reasonable diligence on his part. It remains to determine whether he has demonstrated that his failure to pay timely was justifiable.

[2] Failure to pay rental timely is justifiable only when it is caused by factors outside the lessee's control, which were the proximate cause of the failure. Adolph F. Muratori, 31 IBLA 39 (1977); Constitution Petroleum Co., Inc., 25 IBLA 319 (1976). This Board has held many times that reliance on the receipt of a courtesy notice from BLM does not justify failing to pay rental timely. Richard C. Corbyn, 32 IBLA 296 (1977); Albert DiGuilio, 26 IBLA 169 (1976);

Bobbie Arnold, supra; Louis J. Patla, 10 IBLA 127 (1973). The failure of BLM to change a lessee's address of record which results in the courtesy billing notice's arriving late, as here, does not relieve the lessee of his obligation to determine when the rental is due and to make timely payment. Richard C. Corbyn, supra; Albert DiGuilio, supra; Bobbie Arnold, supra. Therefore, appellant's petition for reinstatement was properly denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

While the Board has held that one is not entitled to rely on the courtesy notice, in this instance lessee specifically requested: "Please forward future charges to our new address as follows * * *." For various reasons lessees find it necessary to inquire of BLM as to the amount of a lease payment and when it is due. The request-change of address was received by the State Office on November 7, 1977, and lessee was justified in believing this was sufficiently in advance of the December 1 due date for a courtesy notice to be sent. Lessee received the courtesy notice on December 2 and transmitted the check on the same date. I would hold that appellant has been reasonably diligent.

Joseph W. Goss
Administrative Judge

